

**ATTACHMENT B**  
**STAFF'S ARGUMENT**

## **STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION**

Respondent Mark S. Ladas (Respondent) was employed by Respondent Central County Fire Department (CCFD) as the Fire Chief until he retired on December 15, 2014. Upon review of his final compensation, CalPERS determined that the Temporary Upgrade Pay reported to CalPERS as special compensation should not be included in his final compensation for the purpose of calculating his retirement allowance.

Respondent appealed this determination and exercised his right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings. The ALJ presided over a one-day hearing in Oakland, California on October 20, 2016. Respondent represented himself at hearing. CCFD did not appear at the hearing.

Prior to the hearing, CalPERS explained the hearing process to Respondent and the need to support his case with witnesses and documents. CalPERS provided Respondent with a copy of the administrative hearing process handbook. CalPERS answered Respondent's questions and provided him with information on how to obtain further information on the process.

The sole issue for determination was whether the Temporary Upgrade Pay allowance reported by the CCFD, and reflected as an increase in Respondent's special compensation during his last years of employment could be included in his final compensation for purposes of calculating his retirement allowance.

CalPERS presented evidence regarding why Respondent's Temporary Upgrade Pay did not meet the statutory definition of "compensation earnable." Respondent served as the Fire Chief for CCFD. Prior to Respondent becoming Fire Chief, CCFD entered into a series of written agreements with the City of Millbrae and the City of San Bruno to share the services of the CCFD Fire Chief. As a result of "significant additional responsibility managing the fire services for the cities of Millbrae and San Bruno," the CCFD Fire Chief received an additional 10% of base pay as compensation. Pursuant to CCFD Resolution 13-11 (Resolution), adopted by the CCFD Board of Directors, the Fire Chief was authorized to receive additional pay equal to an "additional 10% of base pay" as "compensation for additional duties." Based on this information, CalPERS determined that the Temporary Upgrade Pay was not compensation earnable.

CalPERS determined that the compensation did not meet the definition of "special compensation" and did not meet all of the criteria provided in California Code of Regulations section 571(b). Specifically, CalPERS determined that the compensation could not qualify as Temporary Upgrade Pay because that requires working in an upgraded position/classification for a limited duration. Here, Respondent was not working in an upgraded position/classification, he was always the Fire Chief, and it was not for a limited duration. In addition, CalPERS determined that the additional duties and responsibilities associated with managing two additional cities, pursuant to the

Resolution, should be considered overtime. For these reasons, CalPERS concluded the additional compensation should not have been reported to CalPERS as an item of special compensation by Respondent's employer.

Respondent argued that the pay was contained in an employment agreement and was for substantial additional duties based on the sharing of the Fire Chief's services. Respondent also argued that he relied on CCFD's representation to him that the additional compensation would be part of his CalPERS' retirement allowance.

The ALJ reviewed relevant Public Employees' Retirement Law (PERL) sections 20630, 20635 and 20636, as well as California Code of Regulations section 571, all of which prohibit an employer from reporting compensation for work performed outside of normal working hours. Because the Resolution specifically states the Temporary Upgrade Pay was for additional duties, the ALJ found that Temporary Upgrade Pay was not compensation earnable. In addition, the ALJ found that the evidence did not establish that CCFD incorporated the 10% increase in compensation in the publicly available pay schedule for Respondent's position. Therefore, the ALJ found the additional payment does not qualify as a proper increase in Respondent's payrate.

The ALJ took Official Notice of CalPERS' Precedential Decision No. 00-06 (*In the Matter of the Final Compensation of Roy T. Ramirez*) which details the manner in which compensation earnable is determined. The ALJ also took official notice of *Prentice v. Board of Administration, California Public Employees' Retirement System* (2007) 157 Cal. App. 4th 983.

The ALJ found that Respondent's arguments were not persuasive. The ALJ found that CalPERS correctly determined that Respondent's compensation earnable for purposes of calculating his final compensation and in turn, his retirement benefits, cannot include amounts previously paid to him as Temporary Upgrade Pay pursuant to PERL sections 20630, 20635, 20636, and California Code of Regulations section 571.

The ALJ concluded that Respondent's appeal should be denied. The Proposed Decision is supported by the law and the facts. Staff argues that the Board adopt the Proposed Decision.

Because the Proposed Decision applies the law to the salient facts of this case, the risks of adopting the Proposed Decision are minimal. The member may file a Writ Petition in Superior Court seeking to overturn the Decision of the Board.

December 21, 2016

  
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JOHN SHIPLEY  
Senior Staff Attorney